IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 55 OF 1990

The Commissioner of Income-tax,
Bombay City-VI, Bombay. ...Applicant
V/s.
Shri K.H. Mehta. ...Respondent

Mr.Ashok Katangale, Counsel i/b. K.C. Sidhwa for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 15, 2005.

P.C. :-

. The reference registered as Reference No.55/90 has arisen out of the order of the Tribunal in ITA No.2128 and 2129(Bom)/1986 for Assessment Years 1981-82 and 1982-83. It is, thus, clear that for past 15 years this reference is pending before this Court for adjudication.

2. Till today, no evidence/material is produced on record by the Revenue to show that any steps were taken by them to serve the notice of this reference on the respondent-assessee.

3. Today, when the matter was called out for hearing of the Reference made under Section 256(1) of the I.T. Act, learned Counsel for the revenue prayed for adjournment for effecting service since nobody was appearing on behalf of the respondent for want of service.

4. We are not inclined to entertain prayer for grant of adjournment in this case because of the peculiar facts of this case, enumerated hereinafter.

5. This matter was on our board on 6th July, 2005. One week time was granted with specific direction to the applicant-revenue to show whether the service of this reference has been effected on the respondent, since the Counsel for the Revenue could not establish service on the respondent-Assessee. Time to effect service was again granted. Thereafter, again this matter was on our board on 14th July, 2005. Even on this date, department could not produce any material to show service having been effected on the respondent-Assessee. Again, matter was adjourned for a day at the request of the Counsel

for the Assessee to prove service. That is how the matter has come up today on our board.

6. Till today no material is placed before us to show that the service has been effected on the respondent. Even today, learned Counsel for the Applicant is not in a position to make a statement as to whether service has been effected or any steps in that behalf were taken.

7. In the above circumstances, considering the inaction, reluctance, negligent attitude and tendency on the part of the applicant-revenue not to comply with the orders of the Court and to avoid to effect service of the reference proceedings on the assessee, we have no option but refuse to grant adjournment, especially considering the non-cooperation and defiant attitude adopted by the Income-tax department.

8. Inspite of grant of three adjournments, the department could not take steps even to post one notice to the respondent by RPAD. At least, no material is

produced before us to show any steps having been taken by the department.

9. Mr.Kotangle, learned Counsel for respondent-revenue on being asked expressed his inability to give any single reason for not effecting service on the respondent. The officers from the Law and Judiciary posted at Mumbai and the Commissioner of Income-Tax (J) were also noticed, to impress upon them the resultant revenue loss due to their negligence. But they did nothing except blaming each other and their higher ups. It is really surprising that the Revenue itself is not interested in protecting interest of the Revenue.

10. In the above view of the matter, we have no option but to return the reference unanswered.

. Reference stands disposed of accordingly, with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**